

**EXHIBIT  
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**From:** [Robert Kaplan](#)  
**To:** [Spung, James](#)  
**Cc:** [Smith, Chris](#); [Ledden, Kate](#)  
**Subject:** RE: Pork  
**Date:** Tuesday, March 14, 2023 12:27:09 PM

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[EXTERNAL EMAIL]

James, you can say in your motion that DAPs take no position. Wld you please send me a draft before you file it. Thanks Bob

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**From:** Spung, James <[James.Spung@huschblackwell.com](mailto:James.Spung@huschblackwell.com)>  
**Sent:** Monday, March 13, 2023 1:10 PM  
**To:** Robert Kaplan <[RKaplan@kaplanfox.com](mailto:RKaplan@kaplanfox.com)>  
**Cc:** Smith, Chris <[Chris.Smith@huschblackwell.com](mailto:Chris.Smith@huschblackwell.com)>; Ledden, Kate <[Kate.Ledden@huschblackwell.com](mailto:Kate.Ledden@huschblackwell.com)>  
**Subject:** RE: Pork

Bob – I understand. We will hold off until we hear DAPs’ position from you tomorrow.

Again, we don’t think this issue should need the court’s attention, and would request that the DAPs withdraw their expressed “reservation of rights” and accept in writing Triumph’s Corrected Answer as filed. That seems to me to be the easiest and most cooperative course of action here. If the DAPs can’t get to that point, we’ll request leave to amend and state DAPs’ position, which I hope would be that DAPs do not oppose the request, but we await your response.

Thanks Bob.

**A. James Spung**  
**Partner**  
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Direct (St. Louis): 314-345-6664  
[James.Spung@huschblackwell.com](mailto:James.Spung@huschblackwell.com)

\*Admitted to practice in Colorado pending admission.

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**From:** Robert Kaplan <[RKaplan@kaplanfox.com](mailto:RKaplan@kaplanfox.com)>  
**Sent:** Friday, March 10, 2023 5:22 PM  
**To:** Spung, James <[James.Spung@huschblackwell.com](mailto:James.Spung@huschblackwell.com)>  
**Cc:** Smith, Chris <[Chris.Smith@huschblackwell.com](mailto:Chris.Smith@huschblackwell.com)>; Ledden, Kate <[Kate.Ledden@huschblackwell.com](mailto:Kate.Ledden@huschblackwell.com)>  
**Subject:** Re: Pork

[EXTERNAL EMAIL]

Pls hold off. We have a call Tues and I’ll get back to you Tues pm

Sent from my iPhone

On Mar 10, 2023, at 6:49 PM, Spung, James  
<[James.Spung@huschblackwell.com](mailto:James.Spung@huschblackwell.com)> wrote:

Hi Bob – Don't believe we've heard from DAPs on this. At this time we intend to file a motion for leave as early as this coming Monday. If we don't hear from you we will plan to say that DAPs collectively took no position in response to Triumph's request.

Thanks, and have a good weekend.

**A. James Spung**  
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**From:** Spung, James

**Sent:** Wednesday, March 8, 2023 1:39 PM

**To:** Robert Kaplan <[RKaplan@kaplanfox.com](mailto:RKaplan@kaplanfox.com)>

**Cc:** Smith, Chris <[Chris.Smith@huschblackwell.com](mailto:Chris.Smith@huschblackwell.com)>; Ledden, Kate  
<[Kate.Ledden@huschblackwell.com](mailto:Kate.Ledden@huschblackwell.com)>

**Subject:** RE: Pork

Bob, that's unfortunate and will waste the court's time and ours, but thanks for letting us know. To clarify, do DAPs oppose Triumph's motion for leave to file an amended answer that does nothing but include the set of affirmative defenses the DAPs have had since June 2022? Or do DAPs simply take no position? We will indicate the position to the Court.

**A. James Spung**  
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**From:** Christina Vogel <[CVogel@kaplanfox.com](mailto:CVogel@kaplanfox.com)> **On Behalf Of** Robert Kaplan

**Sent:** Wednesday, March 8, 2023 1:01 PM

**To:** Spung, James <[James.Spung@huschblackwell.com](mailto:James.Spung@huschblackwell.com)>

**Cc:** Smith, Chris <[Chris.Smith@huschblackwell.com](mailto:Chris.Smith@huschblackwell.com)>; Ledden, Kate  
<[Kate.Ledden@huschblackwell.com](mailto:Kate.Ledden@huschblackwell.com)>; Robert Kaplan <[RKaplan@kaplanfox.com](mailto:RKaplan@kaplanfox.com)>

**Subject:** FW: Pork

[EXTERNAL EMAIL]

James, thank you for the clarification below. While this is helpful, DAPs have

conferred and have asked me to convey the following: DAPs' principal point and concern is that Triumph filed its answer to the Consolidated DAP Complaint without affirmative defenses, then asked DAPs to consent to an amended pleading. After DAPs declined to consent, Triumph filed a new pleading without court permission. DAPs contend that was improper and reserve all rights.

Thanks Bob

**From:** "Spung, James" <[James.Spung@huschblackwell.com](mailto:James.Spung@huschblackwell.com)>  
**Date:** March 3, 2023 at 11:14:39 AM EST  
**To:** Robert Kaplan <[RKaplan@kaplanfox.com](mailto:RKaplan@kaplanfox.com)>, "Smith, Chris" <[Chris.Smith@huschblackwell.com](mailto:Chris.Smith@huschblackwell.com)>  
**Cc:** "Ledden, Kate" <[Kate.Ledden@huschblackwell.com](mailto:Kate.Ledden@huschblackwell.com)>  
**Subject:** RE: Pork

Bob, here are redlines we discussed, one comparing Triumph's amended affirmative defenses to the Interrogatory responses served in January and the other comparing Triumph's affirmative defenses to the affirmative defenses included in Triumph's corrected answer filed in February. As you can see, it is the same set; only a couple minor proofing-type edits in each document. We hope we can consider this issue resolved.

Thanks, and have a nice weekend.

**A. James Spung**  
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**From:** Robert Kaplan <[RKaplan@kaplanfox.com](mailto:RKaplan@kaplanfox.com)>  
**Sent:** Wednesday, March 1, 2023 6:10 AM  
**To:** Spung, James <[James.Spung@huschblackwell.com](mailto:James.Spung@huschblackwell.com)>; Smith, Chris <[Chris.Smith@huschblackwell.com](mailto:Chris.Smith@huschblackwell.com)>  
**Cc:** Ledden, Kate <[Kate.Ledden@huschblackwell.com](mailto:Kate.Ledden@huschblackwell.com)>  
**Subject:** RE: Pork

[EXTERNAL EMAIL]

James, I'm available before 10 eastern. Let me know when you'd like to speak Thanks Bob

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**From:** Spung, James <[James.Spung@huschblackwell.com](mailto:James.Spung@huschblackwell.com)>  
**Sent:** Tuesday, February 28, 2023 4:33 PM  
**To:** Robert Kaplan <[RKaplan@kaplanfox.com](mailto:RKaplan@kaplanfox.com)>; Smith, Chris <[Chris.Smith@huschblackwell.com](mailto:Chris.Smith@huschblackwell.com)>

**Cc:** Ledden, Kate <[Kate.Ledden@huschblackwell.com](mailto:Kate.Ledden@huschblackwell.com)>

**Subject:** RE: Pork

Bob, please give me a call when you're free. I am heading into a meeting until 3:30pm Mountain time today but can talk after, or I am flexible most of the day tomorrow.

Before we talk, though, see attached. Based on your e-mail I believe you're comparing the corrected answer to an old and since-amended set of affirmative defenses. At DAPs' request, most or all of the defendants amended their affirmative defenses on June 30, 2022 (Triumph even provided a redline to the prior set from May 2022). Triumph's amended affirmative defenses from June 2022 match the affirmative defenses included in our corrected answer, as well as the list of affirmative defenses about which we supplied substantive answers to DAPs' interrogatories in January 2023.

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**From:** Robert Kaplan <[RKaplan@kaplanfox.com](mailto:RKaplan@kaplanfox.com)>

**Sent:** Tuesday, February 28, 2023 12:25 PM

**To:** Smith, Chris <[Chris.Smith@huschblackwell.com](mailto:Chris.Smith@huschblackwell.com)>; Spung, James <[James.Spung@huschblackwell.com](mailto:James.Spung@huschblackwell.com)>

**Subject:** Pork

[EXTERNAL EMAIL]

Chris and James,

I am sending you this as liaison counsel for the Direct Action Plaintiffs (DAPS) on behalf of all DAPs.

On January 20, Triumph filed its Answer to DAPs' Amended Complaint as required by the Scheduling Order. On January 24, Chris sent an email to me as liaison counsel for DAPs, stating that Triumph "did not restate our affirmative defenses in our answer on Friday since we had previously served those per court order and are providing rog responses on them tomorrow." The email further

stated that Triumph was “contemplating refiling just to be consistent” with what other Defendants had done, and asked if DAPs had any opposition. On February 1, James emailed me and stated that “we plan on refiling the answer with the affirmative defenses served on you several months ago attached by the end of the week”. In response, I asked James to call. He called me that day and during our telephone conversation, I stated that DAPs did not consent to Triumph filing a new or amended Answer after the deadline, as Triumph proposed.

Rather than seeking leave to amend its Answer and showing good cause for the amendment as required by the Rules of Civil Procedure, Triumph inexplicably filed an amended answer six days later on February 7, and titled it a “Corrected Answer”. First, because DAPs declined to consent, Triumph’s failure to seek leave to file the amended pleading is improper. Second, the Corrected Answer asserts twenty-two affirmative defenses that were not simply “restated” from Triumph’s previously served Affirmative Defenses in May 2022 (the “May 22 Affirmative Defenses”). Indeed, several assertions that did not appear in the May 22 Affirmative Defenses have now been made in the “Corrected Answer”.

DAPs request that Triumph immediately withdraw its improperly filed “Corrected Answer”. Should Triumph wish to amend its January 20 Answer, it must follow the Rules of this Court and the Rules of Civil Procedure. We trust that Triumph will act accordingly. If Triumph refuses to do so, please let DAPs know by Friday, March 3. If Triumph refuses, DAPs plan to raise the issue with the Court

DAPs are available to meet and confer on this matter at your convenience.

Regards, Bob